



A-475-818

Changed Circumstances Review
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DATE: March 15, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Results of Changed Circumstances Review Regarding
Successor-In-Interest Analysis: Certain Pasta from Italy

I. Background

On July 14, 1996, the Department published in the *Federal Register* the antidumping duty order on pasta from Italy, which included Delverde, S.r.l. (Delverde) and its affiliate Tamma Industrie Alimentari S.r.l. (TIAC)¹ (collectively, Delverde/TIAC).² Pursuant to a decision by the Court of International Trade (CIT), on remand, the Department determined that Delverde/TIAC had a *de minimis* dumping margin and should be excluded from the order on pasta from Italy.³

In 2014, the Department conducted a changed circumstances review (CCR) of Delverde Industrie Alimentari S.p.A. (Delverde S.p.A.) and found that Delverde S.p.A. was not the successor-in-interest to Delverde based on aspects of the bankruptcy of Delverde, changes in management, changes in supplier relationships, and changes in production facilities.⁴ Thus, the Department found that Delverde S.p.A. was not entitled to the exclusion from the *Pasta Order* that was originally granted to Delverde, a defunct entity.⁵

¹ On July 27, 2016, TIAC changed its corporate name to Francesco Tamma S.p.A. (Tamma). See Tamma's letter "Certain Pasta from Italy: Changed Circumstances Review Response of Francesco Tamma S.p.A.," dated October 12, 2016.

² See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996) (*Pasta Order*).

³ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001).

⁴ See *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014); unchanged in *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 76339 (September 19, 2014) and accompanying Issues and Decision Memorandum (*Delverde CCR*).

⁵ See *Delverde CCR*.



On July 29, 2016, American Italian Pasta Company, Dakota Growers Pasta Company, and New World Pasta Company (Petitioners) filed a request for the Department to initiate a CCR of Tamma to determine whether Tamma is the successor-in-interest to TIAC, the company excluded from the *Pasta Order*, that was previously affiliated with the now defunct Delverde.⁶ On September 13, 2016, we initiated a CCR with respect to Tamma.⁷

II. Scope of the Order⁸

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the Order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order.⁹ Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order.¹⁰ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order.¹¹

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

⁶ See Petitioners' letter titled, "Request for 2015-2016 Administrative Reviews of the Antidumping Duty Order on Certain Pasta from Italy," dated July 29, 2016. This letter requests an administrative review and changed circumstances review of Tamma. On August 11, 2016, Petitioners refiled this review request to clarify the specific company names requested for review.

⁷ See *Certain Pasta from Italy: Initiation of Changed Circumstances Review*, 81 FR 62864 (September 13, 2016) (*Initiation Notice*).

⁸ See *Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 4291 (January 13, 2017).

⁹ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

¹⁰ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

¹¹ See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

III. Successor-In-Interest Determination

In determining whether a change in a company and its relationship with outside entities results in a new company that is not a successor to the pre-change company for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to: changes in structure, management, production facilities, supplier relationships, and customer base.¹² Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, the Department will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.¹³ Thus, if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.¹⁴

1. Ownership / Management / Corporate Structure

We stated in the *Initiation Notice* that this CCR is to determine whether Tamma is the successor-in-interest to TIAC, the company excluded from the *Pasta Order* that was previously affiliated with the now defunct Delverde.¹⁵ Information on the record indicates that during the period from 2001 through July 2016, Tamma underwent several changes in its share capital, board of directors, and management structure.¹⁶ The first significant change occurred in 2004, when TIAC severed its ties with Delverde, and the majority of the shares of Delverde were transferred to a company named Abruzzo Alimenti S.r.l., of which TIAC became a direct shareholder, with the Tamma family members becoming indirect shareholders. The “Delverde/TIAC” entity ceased to exist with Delverde’s bankruptcy in February 2005.¹⁷

Moreover, the Tamma family’s shareholding of TIAC changed from over 74 percent in 2001 to only 20 percent of the current Tamma.¹⁸ In 2016, Satel S.r.L, a renewable energy company, acquired the majority shares of TIAC (80 percent), with the remaining 20 percent distributed equally to Raffaele Tamma and Annamaria Tamma.¹⁹ We find that this change in ownership is significant and, therefore, those parties in control of TIAC in 2001 are not the same as those in control of the present Tamma as a result of Satel’s acquisition of TIAC’s majority share.

In addition, information on the record indicates that in 2001, TIAC’s board of directors consisted of Francesco Tamma (Chairman), Nicola Moccia (Director) and Carlo Moccia (Director). These

¹² See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹³ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

¹⁴ See, e.g., *id.* at 9980; *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

¹⁵ See *Initiation Notice*; see also *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

¹⁶ See “Certain Pasta from Italy: Changed Circumstances Review Response of Francesco Tamma S.p.A.,” dated October 12, 2016, at 18-26 (Tamma October 12, 2016, CCR Response).

¹⁷ *Id.*, at 28-29.

¹⁸ *Id.*, at 18 and 22.

¹⁹ *Id.*, at 33.

were some of the most significant leaders in the company, yet none of those individuals are on the board or the current Tamma management team today.²⁰ Indeed, with respect to management positions overall, sales managers changed from Sandro Tamma and Domenico Tamma to Raffaele Tamma. Tamma now has a quality assurance manager; such a position did not exist in the prior TIAC. Indeed, of the original seven-member management team, only three managers remain.²¹

Based on the information above, we preliminarily determine that Tamma has undergone significant changes in its share capital, board of directors, and management structure over the years.

2. Production Facilities

There were intertwined operations between Delverde and TIAC before Delverde's bankruptcy in 2004, because TIAC was the sole supplier of bulk semolina to Delverde, and because TIAC sold its pasta to Delverde from its plant of Cerignola.²² After Delverde's bankruptcy, its Cerignola plant was closed.²³ TIAC stopped semolina production and increased its investment in its pasta plant in Foggia. TIAC's pasta production increased from [] kilograms in 2004 to [] kilograms in 2016.²⁴

We preliminarily determine that these changes in the production facilities are significant, in terms of TIAC severing its ties with Delverde, the closure of its plant of Cerignola, and its investments in a pasta plant in Foggia. Therefore, we preliminarily determine that Tamma's current production facilities are materially dissimilar from those of TIAC's production facilities.

3. Supplier Relationships

Tamma provided a detailed list of suppliers, from largest to smallest, including semolina suppliers, and pasta packaging suppliers, for Delverde/TIAC in 2001, before and after Delverde's bankruptcy in 2005, and for Tamma as of 2016 in Exhibit 2 of its December 9, 2016, CCR supplemental questionnaire response.²⁵ Information on the record indicates that Tamma no longer uses the packing suppliers used by TIAC in 2001, except for one semolina supplier, which was present both in 2001 and 2016; all the other suppliers from 2001 are no longer used by Tamma.²⁶ We preliminarily find significant changes in Tamma's supplier relationships since the dissolution of the Delverde/TIAC entity in 2005. Therefore, we preliminarily determine that the supplier relationships of Tamma are materially dissimilar from those of TIAC's supplier relationships.

²⁰ *Id.*, at 23 and 25.

²¹ The management team consisted of the following members: Sandro Tamma, Domenico Tamma, Dante Piemontese, Maria Tamma, Carlo Moccia, Renato Richciuti and Eugenio Giuzio. The current management team consists Raffaele Tamma, Dante Piemontese, Anna Di Chio, Carlo Peria, Carlo Moccia, Renato Richiuti and Marco Guidarelli. *See* Tamma October 12, 2016 CCR Response at 23 and 26.

²² *Id.*, at 29-30.

²³ *Id.*, at 30.

²⁴ *See* Tamma December 9, 2016, CCR Response at 4.

²⁵ *Id.*, at Exhibit 2.

²⁶ *Id.*, at 5-6 and Exhibit 2.

4. Customer Base

Tamma provided a comprehensive, side-by-side list of customers, by category and market, indicating their relative size/volume of purchases of subject pasta, for Delverde/TIAC in 2001, before and after Delverde's bankruptcy in 2005, and for Tamma as of 2016.²⁷ Information on the record indicates that TIAC's customer base and channels of distribution differ from those of Tamma. TIAC sold subject pasta under private label to retail shops, while Tamma sells to big distribution chains, *e.g.*, supermarkets. Tamma also reported that it has increased its private label pasta sales to customers like [].²⁸ Exhibit 3 of Tamma's December 9, 2016, CCR response indicates that [] is a major customer for Tamma, while TIAC had no sales to this customer. In addition, Tamma now produces two private brands [], while TIAC had no such brand sales in the United States.²⁹ Therefore, we preliminarily determine that Tamma's customer base is materially dissimilar from that of TIAC.

Recommendation: When we consider the above four factors, we find that the primary changes were a change in ownership and a replacement of corporate management, significant changes with regard to production facilities, supplier relationships, and the customer base. Based on the totality of the evidence on the record, we recommend preliminarily determining that Tamma is not the successor-in-interest to TIAC, the company in the Delverde/TIAC entity, which was excluded from the *Pasta Order*.³⁰

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Agree

Disagree

/s/ Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

²⁷ See Tamma December 9, 2016 CCR response at Exhibit 3.

²⁸ *Id.*, at 6 and Exhibit 3.

²⁹ *Id.*, at Exhibit 3.

³⁰ See *Delverde CCR*. See also *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 61796 (October 21, 2004), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004).